IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order st No.ll599 of 2006
with
Civil Appln st no ll60l of 2006

M/s Hemchand and co ..appellants

vs

M M R D A and ors.. respondents

Mr M M Vashi for appellants

Mr R.M.Sawant for respondents

CORAM; A.M.KHANWILKAR J.

DATED l3.6.2006

P.C.

l. Heard learned counsel for the parties. Broadly two contentions are raised before this court to question the correctness of the view taken by the trial court while rejecting the notice of motion for temporary injunction prayed by the appellants during the pendency of the suit. First argument is that the Executive Engineer who issued the suit notice dated 30.l.2006 had no authority to issue such notice purported to be under section 299 of the Mumbai Municipal Corporations Act, l888. The argument principally is that the notice adverts to the exercise of powers delegated to the Executive

Engineer under section 4A of The Mumbai Metropolitan Region Development Authority Act,l974 or under section l7 of the said Act of l974. According to the appellants neither section 4A nor section l7 of the Act of l974 authorises the Executive Engineer to issue the subject notice in respect of the suit structure.It is further submitted that there is nothing to show that the power has been delegated to the Executive Engineer by the Chairman of the Authority or the Metropolitan Commissioner. There is no substance in this submission. Section 4A of the Act of l974 postulates the powers and duties of Chairman, Metropolitan Commissioner, which provides that the Chairman of the Authority shall supervise and control all the activities on behalf of the Authority and shall exercise such powers and perform such duties as are conferred on him by the Act and exercise other powers and perform such other duties as the Authority may, from time to time, by regulations determine. Clause (a) of sub-section 2 of section 4A of the Act of l974 further provides that subject to the provisions of sub-section (l), the Metropolitan Commissioner shall be the Chief Executive Officer of the Authority and shall exercise such powers and perform such functions or duties as the Authority

may by a resolution passed in this behalf direct. The Metropolitan Commissioner may by general or special order further direct that such of the powers or functions or duties delegated to him as aforesaid or under sub-section (9) of section 7 shall be exercised or performed by such of the officer of the Authority as may be specified in such order. Thus what is relevant for our purpose is later part of clause (a) of sub-section (2) of section 4A of the said Act of l974. In so far as exercise of power such as the one for which suit notice has been issued, it will be apposite to advert to section l7(2) of the Act of l974, which provides that for the purpose of preparation and execution of a project or scheme under sub-section (l) , the Metropolitan Commissioner and the Authority shall be deemed to be the Municipal Commissioner and the Corporation, respectively, under the Mumbai Municipal Corporation Act l888 and the Maharashtra Regional and Town Planning Act,l966, and shall respectively, exercise the powers of the Municipal Commissioner and the Corporation under the said Acts. The power which is sought to be exercised by the Executive Engineer Shri A P Athawale by the suit notice dated 30.l.2006, whose name is included in the office order for delegation of power dated l0.l.2005 is

statutory one flowing from section 299 of the Act of l888. On conjoint reading of section l7(2) with the provisions of section 4A (2)(a) of the said Act of l974, it is more than clear that power has been delegated in favour of the Executive Engineer. That has been done by issuance of office order dated l0.l.2005 bearing No.MUTP/R&R/224/2005. The said order clearly provides that towards the speedy and orderly execution of the said projects, it is considered expedient by the Metropolitan Commissioner as the Deemed Municipal Commissioner within the meaning of sub-section (2) of the said section l7 that, powers and functions conferred or imposed upon or vested in the Municipal Commissioner by sections of the Mumbai Municipal Corporation Act l888 more particularly designated in the schedule provided in the office order be exercised and performed by the officers. As such in the schedule the name of Shri A P Athawale Executive Engineer is found at srl no 6. In column 2 of the said schedule reference to sections providing powers and functions delegated,under which delegated powers will have to be exercised by the designated officer. The first item thereof is the Act of l888. Mr. Vashi vehemently contended that this office order is of no avail to the respondents to establish delegation of power in

favour of Shri A P Athawale, Executive Engineer. According to him the power delegated in favour of Shri A.P.Athawale is only referable to the provisions of The Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, l97l. This submission, to my mind, is ill founded. It clearly overlooks that the schedule list refers the names of designated officers to whom powers are delegated . The powers so delegated are referable to the Acts mentioned in the column items of Acts which includes the Act of l888. Thus understood there is no difficulty in accepting the stand taken by the respondents that the suit notice issued by the Executive Engineer Shri A P Athawale on 30.6.2006 is valid and legal notice.

2. That takes me to the second contention raised on behalf of the appellants. According to the appellants the provisions of section 299 can be invoked only in relation to the open land or of land occupied by platforms within the regular line of a street , whether open or enclosed, lies within the regular line of a public street, and is not occupied by a building or if a platform, verandah, step or some other structure external to a building abutting on a public street, or a portion of a platform, verandah, step or other such structure,

is within the regular line of such street. The counsel for the appellants has placed reliance on a decision of the Apex Court in the case of Indian City Properties Ltd and anr vs The Municipal Commissioner of Gr Bombay and anr, reported in 2005(6)SCC ll9. Reliance was placed on the exposition in paras l7 to l9 of the said decision to contend that expression "such structure" will have to be read edjusdem generis to the characteristic of platforms, verandahs and steps etc. There is no quarrel with this proposition. The fact situation of the present case is, however, that the suit structure which is required to be removed under suit notice, clearly comes within the ambit of section 299 of the Act of l888. This aspect has been adverted to by the trial court in para l0 of the impugned judgement. The court has recorded a finding of fact that the structure and compound wall is covered with A C Sheets. The suit structure does not form part of the main building. However, it is extension to the main building and comes within the road line. The sketch produced before the lower court clearly indicates that the suit structure falls outside the building line. May be it is covered by A.C.Sheets; that does not mean that it is the main building. It is also clearly seen from the sketch that the portion of

the suit structure is falling within the road line notified by the authority. If it is so, the argument that section 299 has no application to the fact situation of the present case is totally misconceived. This submission clearly overlooks that the authority has power to proceed not only in respect of open land which falls within the road line but also where the area is enclosed as is the found by the trial court that the suit structure is extension of the main building. The authority was within its power to invoke provisions of section 299 so as to remove the suit structure. Understood thus, there is no substance in this appeal. Appeal therefore fails and the same is dismissed with no order as to costs. Civil Application also stands disposed of accordingly.

3. At this stage the counsel for the appellants submits that some observations be made that the appellants would be entitled for FSI/TDR as the structure occupied by them is being removed by taking recourse to the provisions of section 299 of the Act of l888. It is not necessary to make any such observations as the suit notice itself provides that if the appellants are eligible for such FSI/TDR they may avail of the said benefit, if already not availed the monitory compensation in

respect of FSI/TDR. The counsel for the respondents rightly points out that the question whether the appellants or the original owner of the land will be entitled to such benefit is a matter which will have to be considered on its own merits. Accordingly, that aspect will be considered when occasion arises.